

**MOTION UNDER 28 U.S.C. § TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

MAR 14 2016

UNITED STATES DISTRICT COURT		DISTRICT OF NEW MEXICO	
		Case No: CR-10-2653-JB	CLERK
Place of Confinement: FCI Pollock		Prisoner No: 58246-051	16CV190 JB/cg
UNITED STATES OF AMERICA		V. DERRICK IVAN JIM	
		Movant (<u>include</u> name under which convicted)	

(d) Date of Result (if you know): MAY 12, 2015

(e) Citation to the case (if you know): 2015 U.S. APP. LEXIS 7844

(f) Grounds Raised: THE DISTRICT COURT ERRED IN ENFORCING DEFENDANT'S RULE 410 WAIVER A CROSS APPEAL WAS MADE BY THE GOVERNMENT

(g) Did you file a petition for certiorari in the United States Supreme Court?
Yes No X

If "Yes," answer the following: N/A

(1) Docket or case number (if you know) N/A

(2) Results: N/A

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know) N/A

(5) Grounds raised: N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or Applications concerning this judgment of conviction in any court? Yes No X

11. If your answer to question 10 was "Yes," give the following information:

(a) (1) Name of court: N/A

12. For this motion, state every ground, on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: INEFFECTIVE ASSISTANCE OF COUNSEL.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
PLEASE SEE MOVANT'S MEMORANDUM OF LAW SUBMITTED SEPARATELY HEREWITH.

(b) Direct Appeal of Ground One: THESE ISSUES WERE NOT RAISED IN THE DIRECT APPEAL BECAUSE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS ARE NOT COGNIZABLE FOR DIRECT APPEAL REVIEW.

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No X

(2) If you did not raise this issue in your direct appeal, explain why:
ISSUES INVOLVING INEFFECTIVE ASSISTANCE OF COUNSEL ARE NOT COGNIZABLE FOR DIRECT APPELLATE REVIEW.

(c) Post-Conviction Proceedings: N/A

(1) Did you raise this issue in any post-conviction motion, petition, or Application? Yes No X

(2) If your answer to Question (c) (1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of court's decision: N/A

Results (attach a copy of the court's opinion or order if available):

(3) Did you receive a hearing on your motion, petition, or application? Yes No X

(4) Did you appeal from the denial of your motion, petition, or application? Yes No X

(5) If you answer to Question (c)(4) is "Yes," state: N/A

(6) If your answer to Question (c)(4) is "Yes," state: Name and location Of the Court which entered the judgment. N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise the issue: THIS IS THE FIRST AND ONLY 28 U.S.C. § 2255 MOTION FILED

GROUND TWO INEFFECTIVE ASSISTANCE OF COUNSEL.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that Support your claim): Please see: MOVANT'S MEMORANDUM OF LAW SUBMITTED SEPARATELY HEREWITH.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No X

- (2) If you did not raise this issue in your direct appeal, explain why:
INEFFECTIVE ASSISTANCE OF COUNSEL.

c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or Application? Yes No X

- (2) If your answer to Question (c)(1) is "Yes," state: N/A

Type of Motion or Petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

- (3) Did you receive a hearing on your motion, petition, or application?

Yes No X

- (4) Did you appeal from the denial of your motion, petition, or application?

Yes No X

- (5) If your answer to question to (c)(4) is "Yes," did you raise the issue in the appeal? Yes No X

- (6) If your answer to question (c)(4) is "Yes," state: Name and location of the court where here the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

- (7) If your answer to Question (c)(4) or (c)(5) is "No," explain why you did not raise this issue: N/A

GROUND THREE: INEFFECTIVE ASSISTANCE OF APPELLANT COUNSEL

- (a) Supporting facts (Do not argue or cite law just state the specific facts that support your claim.): SEE SEPARATE MEMORANDUM OF LAW

(b) Direct Appeal of Ground Three:

- (1) If you appealed from the judgment of conviction, did you raise this issue? Yes No X

- (2) If you did not raise this issue in your direct appeal, explain why:
 I only have two grounds for relief, and there is no ground three.

(c) Post Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? Yes No X

(2) If your answer to Question (c)(1) is "Yes," state:

Type of Motion or Petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?
Yes No X

(4) Did you appeal from the denial of your motion, petition, or application?
Yes No X

(5) If you answer to Question (c)(4) is "Yes," did you raise the issue in the Appeal? Yes No X

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or (c)(5) is "No," explain why did not appeal or raise this issue: N/A

GROUND FOUR: Ineffective Assistance of Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that Support your claim: See Memorandum of Points and Authorities

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No X

(2) If you did not raise this issue in your direct appeal explain why: N/A

(c) Post Conviction Proceedings:

(1) Did you raise this issue in any post-conviction, motion, petition, or Application? Yes No X

(2) If your answer to Question (c)(1) is "Yes," state:

Type of Motion or Petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

(Attach a copy of the court's opinion or order, if available: N/A)

(3) Did you receive a hearing on your motion, petition, or application?

Yes No X

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No X

(5) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(6) If your answer to Question (c)(4) or (c)(5) is "No," explain why you did not appeal or raise this issue: NO

None of the issues raised herein have been previously raised in any court because of ineffective assistance of counsel.

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: NONE OF THE GROUNDS PRESENTED HERE HAVE PREVIOUSLY BEEN PRESENTED TO ANY COURT: INEFFECTIVE ASSISTANCE OF PRETRIAL, TRIAL, AND APPELLATE COUNSEL.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the Conviction you are challenging? Yes No X

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the process you are challenging:

(a) At the preliminary hearing: JAMES LOONAM AFPD

(b) At the arraignment and plea: SAME AS ABOVE

(c) At the trial: LAWRENCE E. CHACON

(d) At the sentencing: SAME AS (C)

(e) In any Appeal: JOHN T. CARLSON (AFPD)

(f) In any post-conviction proceeding: NONE

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes No X

17. Do you have any future sentence to serve after you complete the sentence for judgment that you are challenging? Yes No X

(a) If so, give name and location of court that imposed the other sentence you will serve in the future

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes No X

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion. THIS MOTION IS BEING SUBMITTED WITHIN THE ONE-YEAR LIMITATION PERIOD REQUIRED BY THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT.

CONCLUSION

WHEREFORE, Movant requests that the Court grant the following relief: Vacate, Set Aside, or Correct Sentence, or any other relief to which Movant may be entitled:

Dennis B. Drayton Movant

Dated: 3/8/16

58246-051
Federal Correctional Institution
P.O. Box 4050
Bollock, LA 71467

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MATTHEW J. DYKMAN
MAR 14 2016
NM

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LA 71467

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